WILLS—VESTED REMAINDER.—A testator devised lands to his son, "to be held by him for his use and benefit during his natural life, but at his death to be equally divided between the heirs of his body, but should he die without leaving a child or children, in that event he shall have the right to dispose of the lands herein devised to him and the heirs of his body in any manner he may see fit." The son died leaving surviving him two sons, the defendants. At the time of testator's death the son had also a daughter, Linda, who intermarried with the plaintiff. Of this marriage a daughter, Inez, was born. Linda and Inez died before the death of the son. Both defendants and plaintiff claim under the will, the defendants directly, and the plaintiff as heir at law of his wife through his daughter. In order to succeed the plaintiff must show a vested remainder in his wife at the time of her decease, and so the principal question is whether, under the will, the children of the son took a vested or a contingent remainder. *Held,* they took a vested remainder. *Duncan* v. *De Yampert* (Ala. 1913), 62 So. 673.

Although in the will the testator used the expression "heirs of his (the son's) body" twice and that of "children" only once, the court by a peculiar application of the maxim, *Nemo est haeres viventis,* arrived at the conclusion that the testator meant children and not heirs of his body. This ruling is important, for if the court had taken the contrary view, the question of whether plaintiff's wife took a vested or a contingent remainder would have been settled then and there, it having been decided in Alabama that a gift with remainder over to heirs of the body conferred a contingent remainder upon such heirs. *Elmore* v. *Mustin,* 28 Ala. 309. However, since the plaintiff in his brief agreed that the testator meant children, this point deserves no further attention. The majority of the courts in the United States are in accord with the decision in this case in holding that under a gift to children by way of remainder, the children in esse at the death of the testator take vested interests. *McArthur* v. *Scott,* 113 U. S. 340; *Johnson* v. *Weber,* 65 Conn. 501; *Phillips* v. *Johnson,* 14 B. Monr. (Ky.) 140; *Cole* v. *Keyes,* 143 Mass. 237; *Hovey* v. *Nellis,* 98 Mich. 374; *Campbell* v. *Stokes,* 142 N. Y. 23; *Bruce* v. *Bissell,* 119 Ind. 529, and cases cited. In a few jurisdictions the contrary opinion prevails. *Sanford* v. *Sanford,* 58 Ga. 259; *Blatchford* v. *Newberry,* 99 Ill. 11; *Nichols* v. *Guthrie,* 109 Tenn. 535. In the last case the court held that the remainder estate vests in the remaindermen as a class during the continuance of the life estate, and does not vest in the individual members of the class until the termination of the particular estate by the death of the life tenant.

WITNESSES—PRIVILEGE AGAINST SELF-INCRIMINATION.—A New York statute provided that any operator of a motor vehicle who, knowing that injury had been caused to property or person due to his culpability, or to accident, should leave the place without giving his name, residence and license number to the injured party or to a policeman, should be guilty of a felony. Defendant, arraigned for violation of this act, contended that it was invalid because in contravention of the constitutional provision that no man shall be compelled to be a witness against himself in a criminal case. *Held,* that this

was a valid exercise of the police power. *People* v. *Rosenheimer* (N. Y. 1913), 102 N. E. 530.

The contention of the defense was that inasmuch as the statute extended to cases in which the operator was culpably negligent as well as to those in which the injury was due to accident, to compel defendant to disclose his identity was to force him to testify against himself in a criminal case. His identity was one link in the chain of facts incriminating him and the constitutional privilege extends to any facts tending to incriminate. *Aaron Burr's Trial,* 1 Robertson's Repts., 208-244; WIGMORE, EVIDENCE, § 2261, and cases cited therein. The court concedes that this statute requires the disclosure of a material fact, saying "Undoubtedly it does require him to make known a fact which will be a link in the chain of evidence to convict him if in fact he has been guilty of a crime." For authority the court relies somewhat upon decisions in other states upholding statutes requiring the display of license numbers for the purpose of identification, (*People* v. *Schneider,* 139 Mich. 673, and *Frankford Ry. Co.* v. *Philadelphia,* 58 Pa. St. 119); and those requiring disclosure of identity in case of injury, (*Ex Parte Kneedler,* 243 Mo. 642); and upon the fact that the New York statute does not make the infliction of injury a crime nor provide for the use of any evidence the defendant may give in any subsequent criminal proceeding. If any crime exists, it is by force of some other statute than the one in question. The court evidently felt the weight of the defendant's contention, however, as after justifying its decision on the authorities and the reasons given above, it proceeded to develop an entirely new ground upon which the statute might be upheld; viz., that as the legislature might, in the exercise of the police power, exclude all motor vehicles from the highways, it could insist also that as a condition precedent to the use of the highways operators of such vehicles should waive the constitutional privilege. Undoubtedly the position of the defendant finds sanction in many decided cases, and the decision seems to justify Professor WIGMORE in his statement (WIGMORE, EVIDENCE, § 2266), that "the tendency today almost everywhere, is against the loose extension of the privilege—by way of just reaction against an inclination exhibited at one time to the contrary."